

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sonia Landino	Team: Squad #6	CCRB Case #: 201508604	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 10/01/2015 7:00 PM	Location of Incident: § 87(2)(b)	Precinct: 46	18 Mo. SOL 4/1/2017	EO SOL 4/1/2017	
Date/Time CV Reported Fri, 10/09/2015 1:12 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Fri, 10/09/2015 1:12 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Johnny Chalen	09575	947694	046 PCT
2. POM Jasen Perez	10775	949470	046 PCT
3. SGT Laura Barbato	270	944350	046 PCT
4. POM Valdrin Nikqi	07009	954177	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Jasen Perez	Abuse of Authority: Police Officer Jasen Perez interfered with § 87(2)(b) use of a recording device.	A . § 87(2)(g)
B . POM Jasen Perez	Abuse of Authority: Police Officer Jasen Perez threatened to arrest § 87(2)(b).	B . § 87(2)(g)
C . POM Jasen Perez	Abuse of Authority: Police Officer Jasen Perez threatened to arrest § 87(2)(b).	C . § 87(2)(g)
D . POM Johnny Chalen	Discourtesy: Police Officer Johnny Chalen spoke discourteously to § 87(2)(b).	D . § 87(2)(g)
E . POM Jasen Perez	Abuse of Authority: Police Officer Jasen Perez interfered with § 87(2)(b) use of a recording device.	E . § 87(2)(g)
F . POM Jasen Perez	Discourtesy: Police Officer Jasen Perez spoke discourteously to § 87(2)(b).	F . § 87(2)(g)
G . POM Johnny Chalen	Abuse of Authority: Police Officer Johnny Chalen improperly summonsed § 87(2)(b) for littering and obstruction of pedestrian traffic.	G . § 87(2)(g)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(g)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(g)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(g)
K . POM Jasen Perez	Other: There is evidence suggesting Police Officer Jasen Perez provided a false official statement in violation of PG 203-08.	K . § 87(2)(g)

Case Summary

This case exceeded the 90-day benchmark due to the case remaining with the Alternative Dispute Resolution Unit for two-weeks, the undersigned's one-month Grand Jury duty obligation, and the necessity of re-interviewing an officer.

On October 9, 2015, § 87(2)(b) filed this complaint in-person at the CCRB (BR01).

On October 1, 2015, at approximately 7 p.m., § 87(2)(b) his brother § 87(2)(b) his cousin § 87(2)(b) and his friend § 87(2)(b) were standing and talking amongst each other in front of the apartment building located at § 87(2)(b) in the Bronx. As § 87(2)(b) began walking away from the group towards § 87(2)(b) § 87(2)(b) PO Johnny Chalen, PO Jasen Perez, Sgt. Laura Barbato, and PO Valdrin Nikqi of the 46th Precinct arrived at the location and exited their unmarked RMP. The officers immediately approached § 87(2)(b) and briefly spoke with him before PO Chalen placed him in handcuffs. While PO Chalen was handcuffing § 87(2)(b) and an unknown amount of unidentified individuals began gathering near § 87(2)(b) and § 87(2)(b) started to video record the incident with his cell phone.

§ 87(2)(b) yelled for § 87(2)(b) to video record what was happening. When § 87(2)(b) took out his cell phone in order to video record the incident, PO Perez allegedly told him, "If you record, I'm taking you too" (**Allegation A** and **Allegation B**). § 87(2)(b) asked the officers why § 87(2)(b) was being arrested and in response, PO Perez allegedly told him, "Shut up or I'll arrest you too" (**Allegation C**). When § 87(2)(b) yelled a second time for § 87(2)(b) to video record the incident, PO Chalen told him, "Stop being a little bitch. Shut up" (**Allegation D**). When § 87(2)(b) asked the officers why § 87(2)(b) was being arrested, PO Perez physically guided § 87(2)(b) in front of § 87(2)(b) in an effort to obstruct § 87(2)(b) video recording (**Allegation E**). As § 87(2)(b) was being escorted to the unmarked RMP, PO Perez told § 87(2)(b) "Get the fuck out of here. Look at this guy trying to be a fucking street lawyer" (**Allegation F**).

§ 87(2)(b) was transported to the 46th Precinct stationhouse and released later that same night with three summonses issued by PO Chalen for littering, obstructing pedestrian traffic, and refusal to disperse (**Allegation G**).

§ 87(4-b), § 87(2)(g)

§ 87(2)(b) The CCRB found evidence suggesting that PO Perez provided a false official statement regarding this incident (**Allegation K**), which was referred to IAB as spin-off case number 201601542 on February 29, 2016.

This case has video evidence provided by § 87(2)(b) a SnagIt copy of which has been placed below. The full video can be found at Board Review 26 and the transcription of this video can be found at Board Review 21.



201508604_20160325_1512_DM.mp4

Page 2

CCRB Case # 201508604

Mediation, Civil and Criminal Histories

- On October 9, 2015, § 87(2)(b) accepted mediation during his CCRB interview. The case was forwarded to the Alternative Dispute Resolution Unit on October 29, 2015 and referred back to the Investigations Unit on November 5, 2015 at the request of § 87(2)(b).
- On March 24, 2016, a request to determine if a Notice of Claim was filed was submitted; confirmation from the New York City Office of the Comptroller will be forwarded upon receipt (BR25).
- On March 17, 2016, New York State Office of Court Administration records revealed no criminal convictions for § 87(2)(b) (BR18). That same day, a database search of the New York State Unified Court system revealed that § 87(2)(b) is scheduled to appear at the Bronx Criminal Court on § 87(2)(b) (BR19).
- § 87(2)(b)
- As of March 17, 2016, New York State Office of Court Administration records revealed no criminal convictions for § 87(2)(b) and § 87(2)(b).

Civilian and Officer CCRB Histories

- PO Perez has been a member of the service for 5 years and this is the second CCRB complaint filed against him. The abuse of authority allegation in his first CCRB complaint was unsubstantiated § 87(2)(g).
- PO Chalen has been a member of the service for 7 years and has 11 CCRB allegations, none of which have been substantiated, § 87(2)(g), § 87(4-b), § 87(2)(g).
- In case number 201600583, discourtesy and frisk allegations are currently being investigated.
- Sgt. Barbato has been a member of the service for 8 years and has 8 CCRB allegations, none of which have been substantiated, § 87(2)(g), § 87(4-b), § 87(2)(g).
- In case number 201600667, stop and search allegations are currently being investigated.
- PO Nikqi has been a member of the service for 3 years and has 7 CCRB allegations, § 87(2)(g). In case number 201508753, he was § 87(4-b), § 87(2)(g). a frisk allegation was substantiated, in which the CCRB recommended formalized training.
 - In case number 201600667, a stop allegation is currently being investigated.
- § 87(2)(b)
- This is § 87(2)(b) and § 87(2)(b) first CCRB complaint (BR08, BR09, and BR23).

Potential Issues

- Since the video footage provided by § 87(2)(b) does not capture the entire incident, the investigation is unable to observe the events preceding § 87(2)(b) being handcuffed.
- On October 27, 2015, the CCRB Field Team attempted to obtain video footage from § 87(2)(b) but all video footage prior to October 3, 2015 had been erased (BR04).
- On October 15, 2015, § 87(2)(b) provided a phone statement to the CCRB, but did not schedule a CCRB interview. Between October 16, 2015 and October 29, 2015, contact attempts via telephone, postal mail, and e-mail were exhausted and unsuccessful in reaching § 87(2)(b) to schedule a CCRB interview.
- Between November 10, 2015 and November 12, 2015, § 87(2)(b) was contacted twice via telephone, voicemails were left, and a please call letter was e-mailed to him and also mailed via the United States Postal Service. On November 12, 2015, § 87(2)(b) called the CCRB, provided a phone statement, and scheduled a CCRB interview for November 18, 2015. § 87(2)(b) missed his scheduled interview and did not call ahead to cancel or reschedule. On November 20, 2015, § 87(2)(b) was called a third time and he stated that he would call the CCRB back because he was sleeping. Between November 20, 2015 and December 9, 2015, contact attempts via telephone, e-mail, and postal mail were exhausted and unsuccessful in reaching § 87(2)(b) to reschedule his CCRB interview (BR05). A search on the Department of Corrections database on March 31, 2016 revealed that § 87(2)(b) is not currently incarcerated (BR 37).
- The investigation originally listed § 87(2)(b) as solely a witness to the incident and later truncated § 87(2)(b) due to exhausting all contact attempts without successfully reaching him. On December 2, 2015, § 87(2)(b) contacted the CCRB, provided a phone statement indicating that PO Perez spoke discourteously to him, and scheduled a CCRB interview for December 9, 2015. § 87(2)(b) missed his scheduled interview and eventually provided a sworn statement over the phone on December 16, 2015, after all the officers in this case were already interviewed. Since PO Perez's discourteous statement alleged by § 87(2)(b) was not mentioned in any of the other civilians' statements and § 87(2)(b) did not provide a sworn statement until after all of the officers were already interviewed by the CCRB, the alleged discourtesy was unable to be thoroughly covered during PO Perez's first CCRB interview. As such, PO Perez was interviewed a second time.

Findings and Recommendations

Allegations Not Pleaded

- **Abuse of Authority:** It is undisputed that § 87(2)(b) was stopped by officers and issued three summonses, but the circumstances that led to the stop are in dispute. Specifically, all of the officers' testimonies are unclear regarding if the original purpose of the stop was to investigate suspected crimes or if it was to simply summons § 87(2)(b) § 87(2)(g)
§ 87(2)(b)
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§ 87(2)(b)
- **Abuse of Authority:** Since § 87(2)(b) was under arrest and going to be transported to the 46th Precinct stationhouse, a frisk of his outer clothing before placing him in handcuffs and

into the unmarked RMP was procedural and justified. As such, a frisk allegation will not be pleaded against PO Chalen.

- **Force:** § 87(2)(b) and § 87(2)(b) stated that PO Chalen pushed § 87(2)(b) against a wall and handcuffed him. Since § 87(2)(b) stated that he complied with Sgt. Barbato's directive to place his body against the wall with his hands up and never indicated being pushed or forced against the wall, a push allegation will not be pleaded against PO Chalen.

Allegation A – Abuse of Authority: Police Officer Jasen Perez interfered with § 87(2)(b)'s use of a recording device.

Allegation B – Abuse of Authority: Police Officer Jasen Perez threatened to arrest § 87(2)(b)

Allegation C – Abuse of Authority: Police Officer Jasen Perez threatened to arrest § 87(2)(b)

§ 87(2)(b) stated that when he was being handcuffed by PO Chalen, he yelled for § 87(2)(b) to video record what was happening to him. When § 87(2)(b) took out his cell phone to begin video recording, PO Perez allegedly told him, "If you record, I'm taking you too." § 87(2)(b) immediately put his cell phone away and PO Perez allegedly stood next to § 87(2)(b) to ensure that no one else would video record the incident. § 87(2)(b) never indicated that PO Perez threatened to arrest § 87(2)(b) during the incident.

In § 87(2)(b)'s phone statement (BR03), he corroborated that § 87(2)(b) asked him to video record the incident while § 87(2)(b) was being handcuffed. When § 87(2)(b) attempted to remove his cell phone, PO Perez allegedly told him, "Don't record. This is not a movie." § 87(2)(b) never mentioned that PO Perez threatened to arrest § 87(2)(b).

In § 87(2)(b)'s phone statement (BR05), he also corroborated that § 87(2)(b) attempted to video record the incident, but PO Perez allegedly told § 87(2)(b) "If you record, this will happen to you." § 87(2)(b) did not allege that PO Perez threatened to arrest him during the incident.

During § 87(2)(b)'s phone statement (BR06), he did not identify § 87(2)(b) as being present during the incident and indicated that only § 87(2)(b) was video recording the incident. § 87(2)(b) never mentioned officers attempting to interfere with any individual's video recording and stated that at no point during the incident did officers threaten to arrest him, § 87(2)(b) or their two unidentified friends. In his sworn CCRB statement, § 87(2)(b) was consistent with not identifying § 87(2)(b) as being present during the incident and that only § 87(2)(b) was video recording. § 87(2)(b) alleged that when § 87(2)(b) asked the officers why § 87(2)(b) was being arrested, PO Perez allegedly told § 87(2)(b) "Shut up or I'll arrest you too." § 87(2)(b) did not allege that officers threatened to arrest or attempted to interfere with any other individuals' video recording aside from § 87(2)(b).

Initially during PO Perez's first CCRB interview, he could not recall interacting with any individuals attempting to video record the incident. After PO Perez reviewed the video footage provided by § 87(2)(b) he denied interfering with any recording of the incident, denied directing any individuals to not record, and did not recall threatening to arrest any individuals if they recorded the incident or hear any other officer make this threat. During PO Perez's second

CCRB interview, he did not recall threatening to arrest any individuals or hearing any other officers threaten to arrest any individuals. PO Perez did recall individuals video recording during the incident, but did not recall if he interacted with the individuals or made any statements towards them. After reviewing the video footage, PO Perez stated that he generally instructed individuals to move farther away for his and his partners' safety.

PO Chalen corroborated that PO Perez instructed an individual, who was video recording, to step back, but did not know if PO Perez made any other statements to the individual who was recording. PO Chalen denied that he and PO Perez threatened to arrest any individuals if they recorded the incident. Sgt. Barbato stated that an individual was video recording the incident and she told the group of individuals present that they must step back if they wanted to record the incident. PO Perez spoke to the individual recording the incident, but Sgt. Barbato was not aware of what PO Perez may have told this individual. Sgt. Barbato could not remember an officer threatening to arrest any individuals if they recorded the incident. Initially during PO Nikqi's testimony, he could not recall any individuals attempting to record the incident and he did not hear any officers threatening to arrest individuals for video recording. After reviewing the video footage, PO Nikqi stated that the video footage showed PO Perez pushing individuals back, but he did not hear any comments about video recording.

§ 87(2)(b) and § 87(2)(b) corroborated that PO Perez allegedly threatened to arrest § 87(2)(b) if he recorded the incident, but they never alleged that PO Perez threatened to arrest § 87(2)(b). In contrast, § 87(2)(b) does not corroborate that PO Perez threatened to arrest or interfered with § 87(2)(b)'s video recording. Instead, § 87(2)(b) raised the allegation of PO Perez interfering with § 87(2)(b) video recording and threatening to arrest him. All of the officers who were interviewed either denied or did not recall threatening to arrest any individuals who were recording the incident or hearing any officers do so. The provided video footage does not capture any officers threatening to arrest individuals and only depicts PO Perez interfering specifically with § 87(2)(b) video recording.

§ 87(2)(g)

Allegation D – Discourtesy: Police Officer Johnny Chalen spoke discourteously to § 87(2)(b)

It is undisputed that PO Chalen verbally interacted with § 87(2)(b) during this incident.

§ 87(2)(b) stated that after he yelled for § 87(2)(b) to video record the incident a second time, PO Chalen told him, "Stop being a little bitch. Shut up." § 87(2)(b)'s phone statement (BR03) did not mention any discourteous statements made by officers towards civilians during the incident. In § 87(2)(b)'s phone statement (BR05), he stated that § 87(2)(b) asked PO Chalen why he was being arrested and in response, PO Chalen told § 87(2)(b) "Shut the

fuck up.” In § 87(2)(b) phone statement (BR06), he only mentioned a discourteous statement made towards him and stated that he did not hear any officer use profanity against any other civilians during the incident. During § 87(2)(b) sworn CCRB statement, he stated that he heard PO Chalen tell § 87(2)(b) “Stop being a little bitch” after § 87(2)(b) asked the officers why he was being arrested.

PO Chalen did not recall using profanity against § 87(2)(b) and denied telling § 87(2)(b) “Fucking little bitch, just shut up.” He did not hear any officers make the aforementioned statement to § 87(2)(b) and he did not hear officers use profanity against § 87(2)(b) during the incident. After reviewing the provided video footage, PO Chalen identified himself as the officer who stood behind and handcuffed § 87(2)(b) at the beginning of the video footage. When PO Chalen was directed to the 1-second mark of the video footage where a male voice was heard stating “shut the fuck up,” he confirmed that he heard the statement, but he did not know if the male’s voice was his and he did not sure if the male’s voice belonged to an officer or a civilian. PO Chalen was then directed to the 3-second mark of the video footage where another male’s voice was heard stating, “You got me in cuffs for no reason.” PO Chalen reasoned that since he was handcuffing § 87(2)(b) then § 87(2)(b) had obviously made the aforementioned statement.

NYPD Patrol Guide Procedure 203-09 instructs officers to be courteous and respectful when interacting with the public (BR27). The use of profanity by an officer may be permissible if it is used to gain a civilian’s cooperation, but it constitutes misconduct if it is used only in retaliation to a civilian’s discourteous remarks, Police Department v. Jean-Mary, OATH Index No. 129/01 (BR28). Hostility, defiance, or provocation from a civilian does not justify an officer’s use of unprofessional and unnecessary language, Police Department v. Teeter, OATH Index No. 590/01 (BR29).

§ 87(2)(g)
[REDACTED]

[REDACTED]

§ 87(2)(g)

Allegation E – Abuse of Authority: Police Officer Jasen Perez interfered with use of a recording device.

Civilian testimony and the video footage provide undisputable evidence that PO Perez intentionally interfered with § 87(2)(b) video recording of the incident.

Although § 87(2)(b) and § 87(2)(b) did not mention any officers interfering with § 87(2)(b) video recording, it is plausible that they were unable to observe the interference from their circumstantial positioning during the incident. Both § 87(2)(b) and § 87(2)(b) corroborated that PO Perez physically moved § 87(2)(b) to stand in front of § 87(2)(b) with the intention of obstructing § 87(2)(b) video footage of the incident.

During PO Perez’s first CCRB interview, he could not recall interacting with any individuals attempting to video record the incident. After PO Perez reviewed the video footage, he denied interfering with any recording of the incident and denied directing any individuals to not record. During the first part of PO Perez’s second CCRB interview, he was asked if he feared for his safety or felt threatened by the civilian witnesses during the incident. In response, PO Perez stated that he only told individuals to back away for officers’ safety. When PO Perez was asked if the civilians made any specific actions which prompted him to direct them to back away, PO Perez stated the directive was issued for precautionary reasons. As PO Perez provided the aforementioned answer of precautionary reasons, PBA Representative Kate Kilduff-Conlon wrote a phrase on her notepaper and moved the notepaper towards PO Perez, who then glanced at it. The phrase “too close” was observed and stated on the CCRB audio recording. After glancing at the notepaper, PO Perez added to his previous response, “They were too close to us” and PBA Representative Kilduff-Conlon then scribbled out the “too close” phrase on her notepaper. Due to this non-verbal interference, the investigation did not credit PO Perez’s response that the civilians were too close to the officers at the incident location causing him to direct the civilians to back away. Furthermore, PBA Representative Kilduff-Conlon’s non-verbal interference consequently led PO Perez’s CCRB second interview to be recorded on two separate audio files.

During the second part of PO Perez’s second CCRB interview, PO Perez recalled one or several individuals video recording the incident either in front of him or behind him, but he did not recall if he interacted with the individuals or made any statements towards them. PO Perez stated that he only told the individuals to step back for police safety and if he did assist any individuals with moving, then he would have told them to step back using hand gestures or physically guided the individuals away from the officers. PO Perez reviewed the video footage and identified himself as the officer who stated, “Stand over there” at the 7-second mark and “Right there; no no, in front of your boy” at the 9-second mark towards the male individual whose head briefly obstructed the video footage at the 8-second and 10-second marks (See above video 201508604_20160325_1512_DM.mp4). When asked about his reason for making the

aforementioned statements, PO Perez indicated that he made those statements because he wanted to ensure that all the individuals were “standing where he knew they were going to be” for his own safety. At the 10-second mark of the video footage, PO Perez identified himself as the officer who was physically guiding a male individual with his left hand. PO Perez did this so the male individual could “move over and back-up” for PO Perez’s safety.

NYPD Patrol Guide Procedure 212-49 instructs officers to cooperate and assist media representatives during an incident and determine if any threat exists to the media representatives’ safety. If no threat safety exists, “members of the service will not interfere with the videotaping or the photographing of incidents in public places. Intentional interference such as blocking or obstructing cameras or harassing the photographer constitutes censorship” (BR30).

§ 87(2)(g)

[REDACTED]

[REDACTED]

Allegation F – Discourtesy: Police Officer Jasen Perez spoke discourteously to § 87(2)(b)

[REDACTED]

In § 87(2)(b) phone statement (BR06), he alleged that once he and § 87(2)(b) began asking officers why § 87(2)(b) was being arrested, PO Perez told him, “Shut up. You’re trying to be a street lawyer? Get the fuck out of here.” In § 87(2)(b) sworn CCRB statement, he was consistent that when he asked the officers why § 87(2)(b) was being arrested, PO Perez told him, “Get the fuck out of here. Look at this guy trying to be a fucking street lawyer.”

During § 87(2)(b) phone statement (BR05), he indicated that PO Perez made a statement to Sgt. Barbato about how § 87(2)(b) and his friends were “a bunch of street lawyers,” but did not allege any discourtesies. § 87(2)(b) and § 87(2)(b) did not mention any officers’ statements about civilians being street lawyers, but their lack of corroboration is due to the fact

that they were not in close proximity to § 87(2)(b) and § 87(2)(b) at the time when the discourteous statement was made.

During PO Perez's first CCRB interview, he denied using profanity during his tour on the incident date, nor did he recall his partners using profanity towards any civilians. PO Perez denied stating towards a civilian, "Stop being a little bitch. Shut up." During the second part of his second CCRB interview, PO Perez could not remember if he or any other officers made a statement during the incident about individuals being street lawyers. PO Perez could not recall stating to any individuals during the incident, "This fucking street lawyer right here wanna be the big one." PO Perez was then directed to the 19-second and 20-second marks of the video footage where Sgt. Barbato and PO Perez are seen walking past § 87(2)(b) video recording and a male's voice is heard in front of the video recording clearly stating, "This fucking street lawyer right here wanna be the big one." PO Perez identified himself as the only male individual shown on the video footage's screenshot at the 20-second mark. After PO Perez listened to the aforementioned discourteous statement four times, he was asked to identify the voice of the statement. In response, PO Perez stated, "Possibly could be mine or somebody else that's not in the picture frame." When PO Perez was asked to clarify whether his answer meant the voice could be his or if he thought the voice was actually his, Investigative Manager Jessica Pena stated for the record that PBA Representative Kilduff-Conlon tapped PO Perez's leg underneath the interview room table. The same question was restated and PO Perez asked to review discourteous statement once more. After hearing the discourteous statement a fifth time, PO Perez stated the male voice, "Possibly could be mine," but he could not recall one-hundred percent if the voice was his or someone else in the background. PO Perez then specified that the male voice could have been his, the individual recording, or the individual he told to back away.

NYPD Patrol Guide Procedure 203-09 instructs officers to be courteous and respectful when interacting with the public (BR27). The use of profanity by an officer may be permissible if it is used to gain a civilian's cooperation, but it constitutes misconduct if it is used only in retaliation to a civilian's discourteous remarks, Police Department v. Jean-Mary, OATH Index No. 129/01 (BR28). Hostility, defiance, or provocation from a civilian does not justify an officer's use of unprofessional and unnecessary language, Police Department v. Teeter, OATH Index No. 590/01 (BR29).

PO Perez is the only male individual observed walking past § 87(2)(b) video recording with Sgt. Barbato at the exact time the discourteous statement is made at the 19-second and 20-second marks of the video footage (See above video 201508604_20160325_1512_DM.mp4). § 87(2)(g)

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Allegation G – Abuse of Authority: Police Officer Johnny Chalen improperly summonsed § 87(2)(b) for littering and obstruction of pedestrian traffic.

It is undisputed that PO Chalen stopped § 87(2)(b) and summonsed him for refusal to disperse, obstruction of pedestrian traffic, and littering.

§ 87(2)(b) stated that he, § 87(2)(b) and § 87(2)(b) were only standing and talking amongst each other in front of his aunt's apartment building located at § 87(2)(b). As they were conversing, none of the aforementioned individuals made any hand-to-hand contact or suspicious hand movements. § 87(2)(b) did not observe any officers or hear any officers call out to him while he was speaking with § 87(2)(b) and § 87(2)(b). After talking for ten to fifteen minutes, § 87(2)(b) said good-bye to the aforementioned individuals and began walking away from them towards § 87(2)(b). As § 87(2)(b) was walking towards § 87(2)(b) he observed Sgt. Barbato and PO Perez park their unmarked RMP near the fire hydrant in front of § 87(2)(b) an exit the unmarked RMP. When Sgt. Barbato stated to § 87(2)(b) "You don't hear them calling you," § 87(2)(b) turned around and saw PO Chalen and PO Nikqi were walking three-feet behind him. § 87(2)(b) did not observe any officers or hear any officers call out to him while he was speaking with § 87(2)(b) and § 87(2)(b) or while he was walking towards § 87(2)(b). PO Chalen then proceeded to place § 87(2)(b) under arrest. § 87(2)(b) could not recall any additional witnesses being present during the incident aside from § 87(2)(b) and § 87(2)(b).

In § 87(2)(b)'s phone statement, he indicated that he, § 87(2)(b) and other unidentified cousins were standing in front of § 87(2)(b) when an unmarked RMP parked along-side them and four officers exited the unmarked RMP and approached the group of individuals. § 87(2)(b) denied that the group was drinking at the time. For reasons unbeknownst to § 87(2)(b) was placed under arrest for disorderly conduct.

In § 87(2)(b)'s phone statement, he corroborated that he, § 87(2)(b) and two other unidentified individuals were standing and talking amongst each other in front of § 87(2)(b) and did not make any hand-to-hand contact or gestures while they were talking. § 87(2)(b) observed an unmarked RMP driving towards the apartment building they were standing in front of and when § 87(2)(b) also observed the unmarked RMP, he began walking away from the group of individuals since he has had prior encounters with the officers.

Immediately after § 87(2)(b) began walking away from the group of individuals, the unmarked RMP parked in front of § 87(2)(b) and Sgt. Barbato, PO Nikqi, and PO Chalen exited the unmarked RMP and followed § 87(2)(b) while PO Perez proceeded to park the unmarked RMP in front of § 87(2)(b). None of the officers stopped or spoke to § 87(2)(b) or any other individuals from the group and § 87(2)(b) did not hear the officers make any statements to § 87(2)(b) as they were following him. Once § 87(2)(b) was in front of § 87(2)(b) PO Chalen placed him under arrest.

During § 87(2)(b) phone and sworn statements, he corroborated that he, § 87(2)(b) and two unidentified friends were standing and talking amongst each other in front of § 87(2)(b). The group was not drinking and there were no items on the ground aside from a few strawberries. There were no additional individuals standing with the aforementioned group and there were several people that passed the group in order to enter the apartment building, but the group was not blocking the entranceway and no one asked the group to move out of the way. After talking for five minutes, § 87(2)(b) began walking away from the group towards § 87(2)(b) at the same time that § 87(2)(b) observed an unmarked RMP park in front of the apartment building. § 87(2)(b) did not notice the unmarked RMP drive past the group and did not overhear any officers direct the group to disperse beforehand. When PO Perez, Sgt. Barbato, PO Chalen, and PO Nikqi exited the unmarked RMP, they did not stop or speak to anyone except § 87(2)(b). The officers followed § 87(2)(b) and arrested him in front of § 87(2)(b) and § 87(2)(b) did not overhear the officers make any statements to § 87(2)(b) beforehand. Aside from the aforementioned civilians, no other individuals gathered to watch the incident, but there were four or five unidentified individuals already standing in front of § 87(2)(b) prior to the incident who remained for the incident's entirety.

According to PO Chalen, at approximately 6 p.m. on the incident date, he and PO Perez saw a group of individuals that included § 87(2)(b) standing by the entrance of § 87(2)(b). PO Chalen did not observe the group drinking or playing dice and the group seemed to only be standing around. PO Chalen issued multiple verbal orders for the group to disperse from within his unmarked RMP, but the individuals did not comply. After issuing one more order to disperse, the officers quickly kept driving. At approximately 7 p.m. that same night, PO Chalen and PO Perez returned to § 87(2)(b) and observed a group of eight or more individuals standing in front of the location and sitting on crates. PO Chalen stated that since the individuals recognized the unmarked RMP, he was able to hear from his partially opened window, the individuals dropping and breaking their bottles and cups on the sidewalk. PO Chalen further stated that many individuals were blocking the entrance of § 87(2)(b) and making it difficult for individuals to enter and exit the building; however, PO Chalen did not actually observe any individuals attempt to enter or exit the building at the time. With the intention of issuing littering summonses to the group of individuals, PO Chalen and PO Perez parked and exited their unmarked RMP and solely approached § 87(2)(b) since many of the other individuals had already dispersed from the area. Since PO Chalen observed dice on the ground near § 87(2)(b) PO Chalen wanted to specifically stop § 87(2)(b) for "the dice, drinking, and everything." However, PO Chalen did not observe § 87(2)(b) drinking. When asked if he observed § 87(2)(b) playing dice, PO Chalen responded that he did observe § 87(2)(b) make a hand gesture similar to a person dropping something and when PO Chalen approached § 87(2)(b) he observed the dice near § 87(2)(b) feet. PO Chalen directed § 87(2)(b)

to stop multiple times because § 87(2)(b) walked away from the officers. When § 87(2)(b) did stop, PO Chalen asked him what he was doing and requested his identification. § 87(2)(b) did not want to answer PO Chalen's question and PO Chalen could not recall if § 87(2)(b) provided identification at the incident location or at the stationhouse. Since a crowd of more than five individuals gathered, § 87(2)(b) and the individuals began yelling at the officers, and the fact that he was already going to summons § 87(2)(b) for obstructing the entrance of § 87(2)(b) PO Chalen decided to handcuff § 87(2)(b) and transport him to the stationhouse where he could be issued the summons. When PO Chalen was asked during his CCRB interview if § 87(2)(b) committed any other violation aside from obstructing the entranceway of the building, PO Chalen responded that he could not recall what exactly the additional two summonses were issued for, but indicated that since he issued summonses to § 87(2)(b) then the violations would have occurred at the time of the incident. After being presented with § 87(2)(b) three summonses, PO Chalen stated that the refusal to disperse summons was related to the first verbal order to disperse that was given the first time the officers drove by the incident location and the littering summons was issued for the dice on the ground. When asked if § 87(2)(b) was questioned if the dice belonged to him, PO Chalen stated that he did ask § 87(2)(b) what he was doing at the location, but § 87(2)(b) yelled and provided no response. PO Chalen did not include any statements in the narrative of the summons since "he would be there for days" doing so. PO Chalen acknowledged issuing the summonses himself and was not directed to do so by Sgt. Barbato. Only after reviewing the video footage did PO Chalen recall that Sgt. Barbato and PO Nikqi were also present at the on-set of the incident.

Sgt. Barbato stated that she and PO Perez were driving when they observed a crowd of seven or eight individuals standing in front of § 87(2)(b) and obstructing pedestrian traffic. Due to the crowd of individuals, Sgt. Barbato observed individuals attempting to enter and exit § 87(2)(b) but the individuals had to walk around the crowd. This obstruction occurred once and Sgt. Barbato did not observe any other violations at the time. Since the officers' unmarked RMP is known by individuals in the area as a police vehicle, Sgt. Barbato and PO Perez continued to drive past the crowd to allow the crowd to leave. After approximately two minutes, Sgt. Barbato and PO Perez returned to the incident location and parked their unmarked RMP in front of § 87(2)(b) while PO Chalen and PO Nikqi also arrived at the location and exited their police vehicle. A few of the previous individuals left the incident location once they observed the officers and Sgt. Barbato observed liquor bottle on the ground and smelled marijuana. The officers wanted to move the individuals out of the area so PO Perez, PO Chalen, and PO Nikqi directed the individuals to disperse and clear the sidewalk. A few individuals complied, but § 87(2)(b) stated he was not moving and the officers were harassing him. Sgt. Barbato did not observe any members of the group playing dice, did not observe § 87(2)(b) drinking, and did not recall if § 87(2)(b) held anything in his hands. Sgt. Barbato believed it was PO Perez's decision to transport § 87(2)(b) to the stationhouse for officers' safety and to issue him a summons for obstruction pedestrian traffic and did not recall any other violation. When asked about the littering summons, Sgt. Barbato stated that there was a lot of debris around § 87(2)(b) but she did not personally observe § 87(2)(b) litter.

Initially during his first CCRB interview, PO Perez could not recall this incident at all. PO Perez began by stating that he could not recall individuals blocking pedestrian traffic or issuing any

orders for civilians to disperse during his tour. After reviewing the video footage, PO Perez recalled that he arrived at the incident location with Sgt. Barbato, PO Chalen, and PO Nikqi, and observed a group in front of § 87(2)(b). PO Perez could not recall what the group was doing, did not know why his partners interacted with § 87(2)(b), did not recall what § 87(2)(b) was doing, or any of his partner's observations that led them to stop § 87(2)(b). PO Perez did not know if § 87(2)(b) was being disorderly during the incident and did not recall § 87(2)(b) committing any violations.

PO Nikqi confirmed that he, Sgt. Barbato, PO Chalen, and PO Perez were driving when they observed a large crowd gathered in front of § 87(2)(b). From within their unmarked RMP, the officers asked the crowd if anyone was waiting for food from the deli. When the individuals responded that they were not waiting for food, the officers directed the crowd to disperse from the area. Since some of the individuals began walking away, the officers drove away from the location. After approximately three to four minutes, the officers returned to the incident location and observed § 87(2)(b) and five or six individuals standing in front of § 87(2)(b). PO Nikqi later testified that § 87(2)(b) was only with one or two other individuals at the time. PO Nikqi observed some individuals sitting on crates and standing with cups in their hands, but he could not recall specifically what § 87(2)(b) was doing at the time and he did not notice if § 87(2)(b) had been drinking. PO Nikqi stated that the individuals were obstructing pedestrian traffic because no other individuals could walk through the group and would have to cross the street. However, PO Nikqi did not observe any individuals attempt to walk by the group of individuals, which was why he indicated a warning was issued to the group during the first interaction. PO Chalen first approached § 87(2)(b) and told him that he was instructed to leave and asked him why he did not comply with the directive. § 87(2)(b) told PO Chalen that he did not have to leave. At the time, § 87(2)(b) was in violation of refusal to disperse and PO Nikqi did not observe any other violations.

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he obstructs vehicular or pedestrian traffic, or congregates with other persons in a public place and refused to comply with a lawful order of the police to disperse. N.Y.S. Criminal Procedure Law §240.20 (5)(6) (BR31). According to People v. Coley, 967 N.Y.S.2d 868 (2013), a person obstructing pedestrian traffic only commits a chargeable offence if he or she demonstrates a "culpable mental state of intent to cause public inconvenience." To establish intent, the information that officers provide about the situation or its context, must "support and inference that defendant possessed the requisite intent." Furthermore, "the temporary inconvenience of pedestrians being required to walk around defendant and the apprehended others, without more, is insufficient to sustain" a charge (BR 32). The mere expression that one feels aggrieved by the police – even when uttered in a loud voice – cannot constitute an offense. The freedom of individuals verbally opposing or challenging police action without thereby risking arrest is one of the principle characteristics by which we distinguish a free nation from a police state. People v. Eugene Square, 872 N.Y.S. 2d 693 (2008) (BR33).

§ 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g) [Redacted text block]

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§ 87(4-b), § 87(2)(g) [Redacted text block]

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Allegation K - Other Misconduct: There is evidence suggesting Police Officer Jasen Perez provided a false official statement in violation of Patrol Guide Procedure 203-08.

The CCRB found evidence suggesting that PO Perez provided a false official statement regarding this incident. A spin-off case was referred to IAB in regards, under CCRB case number 201601542. The evidence is as follows:

On December 8, 2015, PO Perez provided his first CCRB statement regarding this incident where he denied using profanity and did not recall interacting with individuals attempt to record the incident. After PO Perez was presented with the video footage depicting him moving a male individual in front § 87(2)(b) cell phone and essentially obstructing the video footage, he stated that he never interfered with any recording of the incident. On March 3, 2016, PO Perez was interviewed a second time regarding this incident. During this second interview, PO Perez could not recall if he interacted with the individuals video recording the incident or any statements he may have made to them. He also did not recall telling any individuals, “This fucking street lawyer right here wanna be the big one.” After PO Perez reviewed the video footage several times, he was asked to explain his intention for physically guiding a male individual and directing the male individual to, “Stand over there. Right there. No, no in front of your boy” (See above video 201508604_20160325_1512_DM.mp4). PO Perez responded that made the statement in a general sense to ensure all of the individuals were standing where he knew they would be for his own safety. When PO Perez was directed to the statement, “This fucking street lawyer right here wanna be the big one,” he stated that the voice heard making the statement, “Possibly could be mine or somebody else that’s not in the picture frame.” As PO Perez was asked to clarify if his answer meant that the voice could be his or if he thought the voice was his, PO Perez against stated, “Possibly could be mine,” then stated he could not recall one-hundred percent if the voice was his or someone else in the background not shown on the video footage. PO Perez then stated for the record that the voice could have belonged to him, the individual recording, or the other individual he told to back away.

Patrol Guide Procedure 203-08 states that an officer is prohibited from making a false official statement and that an officer found to have made such a statement will be subject to disciplinary action (BR35). According to Correction v. Centeno OATH Index No. 20301/04 (2205), the statement must be proven to have been made, material, and intentionally false (BR36).

§ 87(2)(g)
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Squad: 6

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____

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